

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**EVELYN B. WILSON**  
Claimant

VS.

**THE BOEING COMPANY - WICHITA**  
Respondent

AND

**AETNA CASUALTY & SURETY**  
Insurance Carrier

AND

## KANSAS WORKERS COMPENSATION FUND

Docket No. 168,422

## ORDER

**ON** the 8th day of February, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge John D. Clark dated November 18, 1993, came on for oral argument by telephone conference.

## APPEARANCES

The respondent and its insurance carrier appeared by and through their attorney, Vaughn Burkholder of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Eric R. Yost of Wichita, Kansas. The issues between respondent and claimant have been settled and claimant's attorney did not appear for argument. There were no other appearances.

## RECORD

The record reviewed and considered by the Appeals Board for purposes of this appeal included the transcript of the November 18, 1993 preliminary hearing on respondent's motion challenging claimant's amendment to its application for hearing changing the alleged date of accident, the transcript of the settlement hearing of January 12, 1994, and all other transcripts and pleadings filed of record in this case.

## ISSUES

Respondent contends that the Administrative Law Judge erred in permitting the claimant to make amendment to its application for hearing to change the date of accident after a majority of the evidence has been taken. Respondent contends it has been

prejudiced by this late amendment because the various depositions have been taken based on the original alleged date of accident.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The decision by the Administrative Law Judge granting claimant leave amended by changing the date of accident is a Preliminary Hearing Order which does not exceed the Administrative Law Judge's jurisdiction and is, therefore, not subject to review by the Appeals Board.

K.S.A. 44-551 limits the jurisdiction of the Appeals Board on appeals from Preliminary Hearing Orders to review only those cases where it is alleged that the Administrative Law Judge has exceeded his or her jurisdiction in granting the relief requested. K.S.A. 44-534a lists certain types of findings which may be considered jurisdictional and, therefore, subject to review. The decision in this case is not one of those listed as jurisdictional and the decision does not exceed the authority of the Administrative Law Judge. The Appeals Board further notes that while the amendment constitutes a change in the allegation, the date of accident ultimately found should depend upon the evidence produced. At that point the pleadings will be considered to conform to the evidence as required by the decision by the Kansas Supreme Court in Pyeatt v. Roadway Express, Inc., 243 Kan. 200, 756 P.2d 438 (1988).

### **AWARD**

**WHEREFORE**, the decision by the Administrative Law Judge John D. Clark dated November 18, 1993 denying respondent's motion opposing claimant's amendment to its date of accident is not subject to review and does, therefore, remain in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc: Vaughn Burkholder, 700 Fourth Financial Center, Wichita, Kansas 67202  
Eric R. Yost, 125 North Market, Suite 1416, Wichita, Kansas 67202  
John D. Clark, Administrative Law Judge  
George Gomez, Director